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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,604	03/31/2004	Thomas Palmieri	2006P26237 US	4357

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EXAMINER	
WRIGHT, PATRICIA KATHRYN	
ART UNIT	**PAPER NUMBER**
1773	

MAIL DATE	DELIVERY MODE
10/15/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/813,604	**Applicant(s)** PALMIERI ET AL.	
	Examiner P. Kathryn Wright	**Art Unit** 1773	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 October 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *27-47*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/P. Kathryn Wright/
Primary Examiner, Art Unit 1773

Continuation of 11. does NOT place the application in condition for allowance because: of arguments of record. In response to the previous rejection of claims 27-45 under 35 U.S.C. 102(b) as being anticipated by Choperena, applicant again argues "Choperena does not disclose a multipath access system for use in an automated immunoassay analyzer, comprising a transfer shuttle, positioned to slide in a direction perpendicular to a portion of the transport device, for moving vessels to and from the vessel holders, and a programmable controller, programmed to determine an individual path along the continuous loop for each of a plurality of vessels, where each vessel has a resource requirement". Applicant argues, as stated at col. 6, lines 33 - 37, each slot of the Choperena analyzer is equal to the first indexing time of the incubator belt, and thus a vessel can be transferred to the wash wheel only at the beginning of the indexing cycle of the incubator. Because the processing cycle is fixed, the scheduler matches analyte tests and assay resources within the fixed cycle. This is because each of the vessels on belt 54 and each of the vessels on wash wheel 102 moves in synchronization because the belt 54 intersects the wash wheel 102 in single position- by-position increments. Applicant further assert, as disclosed at col. 13, lines 38 -44 of Choperena, reactions vessels are transported along a "predetermined" path and at "predetermined" positions along that path the reaction vessels will be acted upon by the wash station and/or the read station. In contrast, the claims of the present disclosure require that the vessels proceed on an individual path based on the resource requirement associated with each vessel, which is enabled by the "means for moving vessels" as claimed. In addition, the claimed programmable controller utilizes information about the resource requirements for each individual vessel to determine the individual path. Therefore, applicant concludes Choperena does not anticipate the claims of the present application at least because there is no programmable controller as claimed, and therefore an individual path cannot be determined for each vessel.
The examiner respectfully disagrees. The examiner maintains that the system of Choperena does, in fact, teach a programmable controller system programmed to determine the individual path (e.g., predetermined path 58) along the continuous loop for each of the vessels, wherein the determination of each path is based on resource requirement (e.g., types of reagents added, duration of incubation, dilution, agitation, number of wash cycles in wash station path 101) associated with each vessel.
See entire document, for example col. 5, line 33-col. 6, line 51, col. 17, line 56- col. 18, line 8 and col. 19, line 69-col. 20, line 31.
The paths determined by the controller do NOT depend on the order in which the controller receives the information. That is, the Choperena analyzer controller does not follow a "first-in-first-out" pattern of entering and processing the test (see entire document, for example col. 5, line 26 to col. 6, line 64). The determination of each path for each vessel is based on the types of reagents added, duration of incubation, dilution, agitation, number of wash cycles in wash station path 101) associated with each vessel. See for example col. 6, lines 3-20, wherein Choperena teaches "...each assay resource has a predetermined fixed operation window within the fixed processing cycle. Thus, the control logic for one assay resource can rely on predetermined timing of other dependent and independent assay resources. Therefore, analyte tests having variable protocols and that are processed by moving reaction vessels in different chronologies can be interleaved if their assay resource requirements do not conflict, (i.e., analyte tests with shorter processing time can be entered after those with longer processing times and the shorter analyte test can finish first.) This can be done because the means of transporting reaction vessels containing assay constituents can present reaction vessels to the necessary assay resources in whatever order is required, regardless of entry order. In a preferred embodiment an optimizing routine is used by the analyzer control means for increased performance and throughput." Thus, Choperena clearly teaches a programmable controller, programmed to determine an individual path along the continuous loop for each of the reaction vessels, based on a resource requirement (e.g., types of reagents added, duration of incubation, dilution, agitation, number of wash cycles in wash station path 101) associated with each vessel. Choperena also teaches the programmable controller is able to move and transfer the vessel between the continuous loops 54 to wash station loop 100 and/or read station loop 130. The Choperena controller determines an individual path along a first continuous loop 54 for each of a plurality of samples based on a resource requirement (e.g., duration of incubation, dilution, agitation, number of wash cycles in wash station path 101) for each sample and transferring the vessel from the first continuous loop 54 to a second continuous loop (i.e., wash station loop 100 or read station loop 130). Thus, contrary to applicant's assertion, Choperena does teach moving reaction vessels along an individual path in a continuous loop for each of the samples.

In response to the previous rejection of claims 46 and 47 under 35 USC 103(a) over Choperena, applicant merely states that the Office presents a conclusory statement that these claims are obvious without presenting any evidentiary support for this conclusion.
The examiner respectfully disagrees. As stated in final rejection, mailed July 27, 2010, Choperena teaches a means for moving the vessel holding means 64 (i.e., via motor) adapted to move the vessels in a clock-wise direction around the loop 54. Choperena also teaches the programmable controller is able to move and transfer the vessel between the continuous loops 54 to wash station loop 100 and/or read station loop 130. The Choperena controller determines an individual path along a first continuous loop 54 for each of a plurality of samples based on a resource requirement (e.g., duration of incubation, dilution, agitation, number of wash cycles in wash station path 101) for each sample and transferring the vessel from the first continuous loop 54 to a second continuous loop (i.e., wash station loop 100 or read station loop 130). Choperena teaches optimizing the path determined for each sample such that samples having identical resource requirements travel an equal distance around the first continuous loop (see for example col. 5, lines 33- col. 6, line 20). Choperena does not specifically recite that for at least one sample the equal distance comprises the sum of a first distance and a second distance, wherein the first distance is traveled in a clockwise direction around the first continuous loop, wherein the second distance is traveled in a counterclockwise direction around the first continuous loop. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to move the motor of the first continuous loop (belt 54) clockwise and then counterclockwise for the predictable result of achieving the necessary incubation time before transporting to the second continuous loop (e.g., wash station loop 100 or read station loop 130).